

AMENDED IN ASSEMBLY MARCH 29, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1193

Introduced by Assembly Member Ruskin

February 23, 2007

An act to add Article 10.2.2 (commencing with Section 25214.8.10) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1193, as amended, Ruskin. Mercury-added thermostats: collection program.

(1) Existing law prohibits, on and after January 1, 2006, a person from selling, offering to sell, or distributing for promotional purposes, in this state, a mercury-added thermostat, as defined, unless the mercury-added thermostat meets specified criteria. A violation of the hazardous waste control laws is a crime.

This bill would enact the Mercury Thermostat Collection Act of 2007 and would require a manufacturer that sold mercury-added thermostats in this state before January 1, 2006, and that sells thermostats in this state on and after January 1, 2008, to establish and maintain a collection and recycling program for out-of-service mercury-added thermostats. The act would prohibit a manufacturer from selling a thermostat in this state on and after July 1, 2008, unless the manufacturer complies with the act and would prohibit a person, on and after July 1, 2008, from selling a thermostat in this state if the manufacturer of that thermostat is subject to, and is not in compliance with, the act. Since a violation of the act's requirements would be a crime, the bill would impose a state-mandated local program by creating new crimes.

The bill would require a collection and recycling program for out-of-service mercury-added thermostats to meet certain requirements, including achieving an annual rate for the collection of ~~mercury from~~ mercury-added thermostats *that become waste in that year* and implementing a manufacturer financial incentive plan providing a financial incentive for the return of each mercury-added thermostat to an authorized mercury-added thermostat collection point. The Department of Toxic Substances Control would be required, by July 1, 2008, to adopt regulations for the ~~establishment and implementation of the manufacturer financial incentive plan,~~ *collection and recycling programs*, which would require on and after January 1, 2009, that a financial incentive be provided for the collection of mercury-added thermostats from contractors and service technicians, and on and after January 1, 2010, that a financial incentive be provided for the collection of mercury-added thermostats from homeowners. The bill would require the financial incentive to be set at a minimum of \$5, but would require the department to decrease that amount if it makes a certain determination.

The bill would prohibit on and after January 1, 2009, a wholesaler or retailer from selling a thermostat in the state unless the wholesaler or retailer acts as a collection site for out-of-service mercury-added thermostats. Each wholesaler and retailer would be required to distribute the educational and outreach materials developed by manufacturers to the customers of that wholesaler or retailer. The bill would require the department, by January 1, 2009, to notify each person whom the department determines is a wholesaler and, not less than once every 3 months thereafter, to notify all persons who commences operations as a wholesaler.

The department would be authorized to adopt regulations to require a collection and recycling program to achieve, on and after January 1, 2015, a collection rate for mercury-added thermostats that is greater than 80%.

The act would require each program to submit an annual report to the department regarding the collection of mercury-added thermostats and the department would be required to ~~submit an annual report to the Legislature~~ *post information on its Internet Web site* on the implementation of the act in collecting and recycling mercury-added thermostats.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Article 10.2.2 (commencing with Section 25214.8.10) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.2.2. Mercury Thermostat Collection Act of 2007

25214.8.10. (a) The Legislature finds and declares all of the following:

(1) According to a 2004 study by the Environmental Protection Agency, more than 10 percent of the estimated mercury reservoir still currently in use in the United States resides in mercury-added thermostats.

(2) State law bans the sale of new mercury-added thermostats for most uses after January 1, 2006, but the long lifetime of thermostats means that many of them are still in use.

(3) *State law bans disposal of mercury-added thermostats in solid waste landfills, but a system for collecting and recycling mercury-added thermostats at the end of their useful lives has not been established.*

~~(3)~~

(4) In 2000, the largest thermostat makers, General Electric, Honeywell and White Rodgers, established the Thermostat Recycling Corporation (TRC) to run a program for collecting waste mercury-added thermostats. Under the TRC program, thermostat wholesalers volunteer to place bins where heating, ventilation, and air conditioning (HVAC) contractors can drop off thermostats.

~~(4) Currently, less than _____~~

(5) *Currently, less than 5 percent of the mercury-added thermostats removed from buildings in state is turned in to the TRC collection program, according to TRC collection estimates.*

1 ~~(5)~~

2 (6) Companies that historically manufactured and sold
3 mercury-added thermostats in California before 2006 have a
4 responsibility to recover discarded mercury thermostats and assure
5 that they are properly handled and recycled.

6 (b) This article shall be known, and may be cited, as the
7 “Mercury Thermostat Collection Act of 2007.”

8 25214.8.11. For purposes of this article, the following
9 definitions shall apply:

10 (a) “Manufacturer” means a business concern that sold
11 mercury-added thermostats in this state before January 1, 2006,
12 that were made by the business concern, and that sells thermostats
13 in this state that are made by that business concern, on and after
14 January 1, 2008, that are not mercury-added thermostats.

15 (b) “Mercury-added thermostat” has the same meaning as
16 defined in paragraph (2) of subdivision (b) of Section 25214.8.1.

17 (c) “Out-of-service mercury added thermostat” means a
18 mercury-added thermostat that is removed from a building or
19 facility in this state and is intended to be discarded.

20 (d) *“Retailer” means a person who sells thermostats of any*
21 *kind directly to a homeowner or other nonprofessional through a*
22 *selling or distribution mechanism, including, but not limited to, a*
23 *sale using catalogs or the Internet. A retailer may also be a*
24 *wholesaler if the person meets the definition of wholesaler.*

25 ~~(d)~~

26 (e) “Thermostat” means a product or device that uses a switch
27 to sense and control room temperature through communication
28 with heating, ventilating, or air-conditioning equipment.
29 “Thermostat” includes a thermostat used to sense and control room
30 temperature in residential, commercial, industrial, and other
31 buildings, but does not include a thermostat used to sense and
32 control temperature as part of a manufacturing process.

33 (f) *“Wholesaler” means a person who is notified by the*
34 *department pursuant to Section 25214.8.14, and whom the*
35 *department determines is engaged in the distribution and wholesale*
36 *selling of significant quantities of heating, ventilation, and*
37 *air-conditioning components to contractors who install heating,*
38 *ventilation, and air-conditioning components.*

39 (g) *“Universal waste rules” means the regulations adopted by*
40 *the department for the management of universal waste, pursuant*

1 *to this chapter, as found in Chapter 23 (commencing with Section*
2 *66273.1) of Division 4.5 of Title 22 of the California Code of*
3 *Regulations.*

4 25214.8.12. (a) A manufacturer shall not sell a thermostat in
5 this state on and after July 1, 2008, unless the manufacturer
6 establishes and maintains a collection and recycling program for
7 out-of-service mercury-added thermostats in compliance with this
8 article. The collection and recycling program may be established
9 by an individual manufacturer or collectively with other
10 manufacturers, but the program shall meet all of the requirements
11 of Section 25214.8.13.

12 (b) On and after July 1, 2008, a person shall not sell a thermostat
13 in this state if the manufacturer of that thermostat is subject to,
14 and is not in compliance with, this article.

15 25214.8.13. A collection and recycling program for
16 out-of-service mercury-added thermostats shall meet all of the
17 following requirements, in accordance with the regulations adopted
18 by the department pursuant to this article:

19 (a) The program achieves the following rate of collection of
20 mercury-added thermostats:

21 (1) On and after January 1, 2009, the program *annually* collects
22 ~~no less than 125 pounds of mercury annually from mercury-added~~
23 ~~thermostats. than 50 percent of the mercury-added thermostats~~
24 ~~that become waste in that year, as determined by the department.~~

25 (2) On and after January 1, 2012, the program *annually* collects
26 ~~no less than 160 pounds of mercury annually from mercury-added~~
27 ~~thermostats. than 80 percent of the mercury-added thermostats~~
28 ~~that become waste in that year, as determined by the department.~~

29 (3) *On and after January 1, 2015, the percentage collection*
30 *rate established by the department, if the department adopts*
31 *regulations pursuant to Section 25214.8.16.*

32 (b) The mercury-added thermostats collected by the program
33 are collected, handled, and recycled in compliance with this chapter
34 and the regulations adopted pursuant to this chapter.

35 (c) ~~Authorized bins for mercury-added thermostat collection~~
36 ~~are made available at all heating, ventilation, and air conditioning~~
37 ~~supply locations, electrical supply locations, and plumbing supply~~
38 ~~distributor locations that sell thermostats that are sold by a~~
39 ~~manufacturer subject to this article. are made available at all~~
40 *wholesalers and retailers.*

(d) On and after January 1, 2009, the program makes available authorized bins for mercury-added thermostat collection to any local agency that requests a bin for mercury-added thermostat collection at a household hazardous waste collection facility or event, if the facility or event is authorized by the department for the collection of mercury-added thermostat.

(e) *The program develops educational and outreach materials aimed at contractors and homeowners, and makes those materials available to wholesalers, retailers, and household hazardous waste programs. These materials may include, but are not limited to, one or more of the following:*

(1) *Signage that is prominently displayed and easily visible to the consumer.*

(2) *Written materials provided to the consumer at the time of purchase, or delivery, or both.*

(3) *Reference to the recycling opportunity in advertising or other promotional materials, or both.*

(4) *Direct communications with the consumer at the time of purchase.*

(e)

(f) (1) On and after January 1, 2009, the program implements phase 1 of the manufacturer financial incentive plan adopted by the department, by providing a financial incentive for the return of each mercury-added thermostat by a contractor or service technician to an authorized mercury-added thermostat collection point.

(2) On and after January 1, 2010, the program implements phase 2 of the manufacturer financial incentive plan adopted by the department, by providing a financial incentive for the return of each mercury-added thermostat by a homeowner to an authorized mercury-added ~~thermometer~~ thermostat collection point.

(f)

(g) On and after January 30, 2008, and by January 30 annually thereafter, the program submits an annual report to the department that includes all of the following:

(1) The number of mercury-added thermostats collected and recycled by the program pursuant to this article during the previous calendar year.

1 (2) The estimated total amount of mercury contained in the
2 thermostat components collected by the program pursuant to this
3 article.

4 (3) An evaluation of the effectiveness of the program and the
5 financial incentives provided pursuant to subdivision-(e) (f).

6 (4) An accounting of the administrative costs incurred in the
7 course of administering the program and the financial incentive
8 plan developed pursuant to subdivision-(e) (f).

9 (5) *Copies, in an electronic format, of outreach and educational*
10 *materials used by the program.*

11 25214.8.14. (a) *On and after January 1, 2009, a wholesaler*
12 *or retailer shall not sell a thermostat in the state unless the*
13 *wholesaler or retailer acts as a collection site for out-of-service*
14 *mercury-added thermostats.*

15 (b) *A wholesaler or retailer shall comply with subdivision (a)*
16 *by taking one of the following actions:*

17 (1) *Participate as a collection site in a manufacturer collection*
18 *and recycling program conducted pursuant to Section 25214.8.13.*

19 (2) *Collect out-of-service mercury-added thermostats and ensure*
20 *the recycling of those collected thermostats in accordance with*
21 *the universal waste rules.*

22 (c) *Each wholesaler and retailer shall distribute the educational*
23 *and outreach materials developed by manufacturers pursuant to*
24 *Section 25214.8.13, to the customers of that wholesaler or retailer.*

25 (d) *On or before January 1, 2009, the department shall notify*
26 *each person whom the department determines is a wholesaler for*
27 *purposes of this article. Not less than once every three months*
28 *thereafter, the department shall notify all persons who commence*
29 *operations as a wholesaler.*

30 ~~25214.8.14. On or before July 1, 2008, the department shall~~
31 ~~adopt regulations for the establishment and implementation of a~~
32 ~~manufacturer financial incentive plan, which shall be developed~~
33 ~~in accordance with all of the following:~~

34 (a) ~~(1) Phase 1 of the plan shall require, on and after January 1,~~
35 ~~2009, a financial incentive to be provided for the collection of~~
36 ~~mercury-added thermostats from contractors and service~~
37 ~~technicians.~~

38 ~~(2) Phase 2 of the plan shall require, on and after January 1,~~
39 ~~2010, a financial incentive to be provided for the collection of~~
40 ~~mercury-added thermostats from homeowners.~~

~~(b) The department shall develop the plan in consultation with a stakeholder group that includes representatives from the thermostat industry, environmental groups, thermostat wholesalers, and service contractors.~~

25214.8.15. (a) *On or before July 1, 2008, the department shall adopt regulations governing the manufacturer collection and recycling program required to be established pursuant to this article.*

(1) Phase 1 of the regulations shall require, on and after January 1, 2009, a financial incentive to be provided by a manufacturer for the collection of mercury-added thermostats from contractors and service technicians.

(2) Phase 2 of the regulations shall require, on and after January 1, 2010, a financial incentive to be provided by a manufacturer for the collection of mercury-added thermostats from homeowners.

(b) The regulations shall specify the methods used for determining the collection rates required by Section 25214.8.13.

(c) The department shall develop the regulations in consultation with representatives from local governments, manufacturers, environmental groups, retailers, wholesalers, and service contractors.

~~(e)~~
(d) (1) Except as provided in paragraph (2), the plan shall require that a financial incentive with a minimum value of five dollars (\$5) be provided to each eligible person who returns a mercury-added thermostat to an authorized collection point.

(2) The department shall decrease the amount of the financial incentive required to be provided pursuant to this section if it determines that the five dollar (\$5) financial incentive is excessive and unreasonable, in which case the department shall set the amount of the financial incentive in a fair and reasonable amount needed to encourage the return of mercury-added thermostats.

(3) The financial incentive may include, but is not limited to, cash, rebates, discounts, coupons, or other incentives, as approved by the department.

~~(f)~~
(e) The plan shall ensure, to the maximum extent practical, that all of the following occur:

1 (1) The plan maximizes the capture rate of out-of-service
2 mercury-added thermostats.

3 (2) The plan provides adequate incentives and education to
4 contractors, service technicians, and homeowners to encourage
5 return of thermostats to established recycling collection points.

6 (3) The plan minimizes administrative costs.

7 (4) The plan encourages the purchase of nonmercury thermostats
8 that qualify for the Energy Star program of the Environmental
9 Protection Agency, as replacements for mercury-added thermostats.

10 (5) The plan includes mechanisms to protect against the
11 fraudulent return of thermostats.

12 *25214.8.16. The department may adopt regulations to require*
13 *a collection and recycling program for out-of-service*
14 *mercury-added thermostats to achieve, on and after January 1,*
15 *2015, an annual collection rate of mercury-added thermostats that*
16 *become waste in a year that is greater than 80 percent.*

17 ~~25214.8.15.~~

18 *25214.8.17. On and before July 1, 2008, and on or before July*
19 *1 annually thereafter, the department shall submit a report to the*
20 ~~Legislature~~ *post on its Internet Web site information on the*
21 *implementation of this article in collecting and recycling*
22 *mercury-added thermostats in the state.*

23 ~~(a) The report submitted on July 1, 2008, information~~ shall
24 include a description and discussion of the financial incentive plan
25 proposed to be established pursuant to this article and
26 recommendations for any statutory changes concerning the
27 collection and recycling of mercury-added thermostats.

28 ~~(b) The reports submitted on and after July 1, 2009, On and~~
29 ~~after July 1, 2009, the information~~ shall include an evaluation of
30 thermostat collection and recycling programs established pursuant
31 to this article, information on actual collection rates, and
32 recommendations for any statutory changes concerning the
33 collection and recycling of mercury-added thermostats.

34 *(c) The information posted shall also include the annual report*
35 *submitted by the program pursuant to subdivision (g) of Section*
36 *25214.8.13.*

37 SEC. 2. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
 2 for a crime or infraction, within the meaning of Section 17556 of
 3 the Government Code, or changes the definition of a crime within
 4 the meaning of Section 6 of Article XIII B of the California
 5 Constitution.

6
 7 _____

8 **CORRECTIONS:**

9 **Text—Pages 5 and 6.**

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